

DECISION AND ORDER

Decision Issue Date Tuesday, August 13, 2019

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): SAYYED MAHDI ARAM

Applicant: EDEN ENGINEERING & DESIGN INC

Property Address/Description: 88 NIPIGON AVE

Committee of Adjustment Case File: 18 241664 NNY 24 MV

TLAB Case File Number: 19 119812 S45 18 TLAB

Hearing date: Monday, July 15, 2019

DECISION DELIVERED BY SHAHEYNOOR TALUKDER

APPEARANCES

Name	Role	Representative
Eden Engineering & Design Inc.	Applicant	
Sayyed Mahdi Aram	Appellant/Owner	Eden Engineering & Design Inc.
City of Toronto	Party	Michael Mahoney
Ameena Khan	Expert Witness	
Peter Roh	Participant	
Ashok Kumar Debnath	Participant	Levstein, Azan Barristers and Solicitors
Joanna Roh	Participant	

INTRODUCTION

1. This is an appeal by the Applicant owners, Sayyed Mahdi Aram and Sayyed Aref Aram. They appeal the decision of the Committee of Adjustment (COA) with respect to the gazebo built at the rear of the Applicants' property located at 88 Nipigon Avenue (Subject Property).
2. The Applicants built the gazebo without any required building permits. They sought to legalize and maintain the gazebo by approval of the application for minor variances at the COA. The COA refused the approval of the requested variances in its decision dated February 7, 2019.
3. The Applicants appealed the COA decision to the Toronto Local Appeal Body (TLAB). The appeal was opposed by the City of Toronto (City) and by several neighbours, Mr. Peter Loh, Ms. Joanna Roh and Mr. Ashok Kumar Debnath.
4. Though the Applicants initiated the appeal process, they did not file any document disclosure or witness statements. The City filed disclosure and witness statements. The neighbours filed participant statements.
5. On the hearing day, the Applicants did not attend the hearing. The City and Mr. and Mrs. Roh attended the hearing. Mr. Debnath was not able to attend the hearing but his counsel, Mr. Ivor Levstein, attended on behalf of Mr. Debnath. It was an unusual situation where all parties and participants were ready to proceed with the hearing in the absence of the Appellants.
6. At the hearing, I informed the parties that I visited the site of the subject property and the surrounding area.

MATTERS IN ISSUE

7. The main issue is whether the recently built gazebo, should be legalized and maintained through the approval of the variances requested at the COA. These variances are:

1. Chapter 10.20.30.40.(1), By-law 569-2013

The maximum permitted lot coverage is 30 % of the lot area.

The proposed lot coverage is 43.4 % of the lot area.

2. Chapter 10.5.60.70.(1), By-law 569-2013

The total area on a lot covered by ancillary buildings or structures may not exceed 10 % of the lot area.

The proposed ancillary buildings or structures cover 11.4 % of the lot area.

3. Chapter 10.5.60.20.(11), By-law 569-2013

The minimum required side yard setback for a platform, such as a deck or similar structure, is 0.3m.

The proposed platform is 0m from the rear lot line.

4. Chapter 10.5.60.20.(11), By-law 569-2013

The minimum required side yard setback for a platform, such as a deck or similar structure, is 0.3m.

The proposed platform is 0m from the east side lot line.

5. Chapter 10.5.60.20.(11), By-law 569-2013

The minimum required side yard setback for a platform, such as a deck or similar structure, is 0.3m.

The proposed platform is 0m from the west side lot line.

JURISDICTION

Provincial Policy – S. 3

8. A decision of the TLAB must be consistent with the 2014 Provincial Policy Statement (PPS) and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area (Growth Plan).

Minor Variance – S. 45(1)

9. In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:
 - maintain the general intent and purpose of the Official Plan;
 - maintain the general intent and purpose of the Zoning By-laws;
 - are desirable for the appropriate development or use of the land; and
 - are minor.

EVIDENCE

10. The Applicants bear the onus of proving that the variances requested meet the four tests under the Act. As the Applicants failed to provide any form of evidence, they did not establish that the variances requested met the four tests. Notwithstanding this, as they were present, I requested the City and the Participants to proceed with their testimony so that the evidence tendered by them was on the record. Below, I have included summaries of their oral testimony.

11. The City called Ms. Ameena Khan, who is employed by the City as an Assistant Planner. She was qualified to give professional land use planning opinion evidence. There was no contrary evidence presented.
12. Ms. Khan testified that the subject property is located on the north side of Nipigon Avenue, east of Yonge Street and south of Steeles Avenue East. The subject site is in an area designated as a Neighbourhood under the OP and detached residential under the City of Toronto Zoning By-law No. 569-2013.
13. Ms. Khan considered the neighbourhood of the subject property to be bounded by Steeles Avenue East to the north, Newton Drive to the south, Yonge Street to the west, and Maxome Avenue to the east. This neighbourhood is characterized by single family detached dwellings, which are usually one or two storeys, with reinvestment in the neighbourhood being mostly new builds.
14. Ms. Khan referred to the history of COA decisions related to the subject property. On July 9, 2014, the Applicants filed an application for minor variances with the COA to permit a new two-storey detached house with a lot coverage of 31.95% of the lot area, while a lot coverage of 30% was allowed under the zoning by-law. The COA approved the requested variances. As a result, the house on the subject property already had a large lot coverage. The current appeal now seeks to increase the lot coverage to 43.4%, where the gazebo will cover 11.4 % of the lot area. Ms. Khan stated that the Applicants did not request any variance for the gazebo at the COA in 2014 when they had the opportunity to do so.
15. Ms. Khan opined that the requested variances do not satisfy the four tests for minor variances. The gazebo structure is on the border of the lot line at the rear and on the east lot line. The 0m setback from the rear and east side yard does not allow for adequate area for maintenance. The positioning of this structure does not satisfy the intent and purpose of the zoning by-laws for rear and side yard setbacks. The detrimental effect on the neighbours are not minor as there is no separation between the gazebo and the neighbouring properties at the rear and at the east.
16. Mr. Peter Roh and Mrs. Joanna Roh are neighbours residing at 85 Steeles Avenue, which abuts the subject property at the rear. They both testified at the hearing as participants. They were concerned that the gazebo structure whose wall abuts their property results in no separation between their property and the gazebo. In addition, the roof of the gazebo slants towards their property, which resulted in the rain water falling on the top of the roof to flow towards their property, resulting in collection of water in puddles on their property.
17. Mr. and Mrs. Roh were also concerned that the high walls and roof of the gazebo blocked their view from the kitchen. They noted that the structure was not just a simple shed, but a permanent long installation which formed a wall along the back and the side lot line of the property.

18. They stated that this structure was built in flagrant disregard of the rules as the Applicants did not seek permission before building the gazebo. In addition, they were concerned about their safety because shingles and other construction materials fell from the roof on to their property, and which was not removed by the Applicants.


ANALYSIS, FINDINGS, REASONS

19. I do not have any evidence before me that can assist me in determining that the variances requested at appeal satisfy the four tests under the Act. The Applicant did not attend the hearing or provide any disclosure. As previously mentioned, the Applicant bears the onus to prove that the requested variances meet the four tests. The parties and participants opposing the application for variance do not need to provide evidence to the contrary when the Applicant has failed to provide any evidence.

20. Therefore, based on the evidence before me, I do not find that the application for minor variance meets the four tests as set out in the Act.

DECISION AND ORDER

21. The appeal is dismissed.

X 

Shaheynoor Talukder
Panel Chair, Toronto Local Appeal Body
Signed by: Shaheynoor Talukder